Supreme Court, U. S.
FILED
NOV 2 1979
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-588

In the Matter of

UNITED CASKET CO., INC.,

Bankrupt.

YORK-HOOVER CORP. and ELGIN METAL CASKET CO., INC.,

Petitioners,

vs.

UNITED CASKET CO., INC.,

Respondent,

and

DEPARTMENT OF TAXATION AND FINANCE
OF THE STATE OF NEW YORK,

Respondent.

BRIEF OF THE RESPONDENT UNITED CASKET CO., INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

HAROLD S. BERZOW, Esq.
Counsel for Respondent
United Casket Co., Inc.
67 Wall Street
New York, New York 10005
(212) 344-2929

NEAL M. ROSENBLOOM, Esq.
FINKEL, GOLDSTEIN & BERZOW
Of Counsel
67 Wall Street
New York, New York 10005
(212) 344-2929

TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statement of the Case	3
Reasons for Denying the Writ	3
I. The Court of Appeals for the Second Circuit Correctly Interpreted §1141(b) of the New York Tax Law (McKinney 1969) in Accordance With the Decision of the New York State Court of Appeals in *Marine Midland State Bank-Central* v. *Gleason, et al.*	4
II. The Interpretation by the New York State Court of Appeals of a New York State Statute Is Binding Upon the Federal Court	5
III. The New York State Court of Appeals Decision in *Marine Midland Bank-Central* v. *Gleason, et al.* Was Not a Departure From Prior Decisions but Merely a Reaffirmation of What the Law Is in New York State	6
IV. The New York State Tax Warrant Having Been Sufficiently Choate to Create a Lien Upon the Bankrupt's Personalty and Having Been Docketed Prior to the Security Interest of the Petitioners Was Therefore Prior in Right	9
CONCLUSION	12
APPENDIX	1a

Table of Authorities

Cases: PAGE

Argiriou & Finkel v. *Marciante Luncheonette II, Inc.*, 64 Misc.2d 660, 315 N.Y.S.2d 448 (Sup. Ct. 1970) 8

Matter of Carnegie Trust Co., 206 N.Y. 390, 99 N.E. 1096 (1912) 8-9

Corrigan v. *U.S. Fire Insurance Company*, 427 F. Supp. 940 (S.D.N.Y. 1977) 7

In re DeKalb Ave. Constr., 11 A.D.2d 240, 205 N.Y.S. 2d 125, aff'd 12 N.Y.2d 1051, 19 N.E.2d 240, 239 NY.S.2d 880 (1963) 8

In re Estate of Robbins, 74 Misc.2d 793, 346 N.Y.S.2d 86 (Surr. Ct. 1973) 8

Dixie Greyhound Lines, Inc. v. *McCarroll*, 101 F.2d 572, 574 (8th Cir. 1939); aff'd 309 U.S. 176 (1940); reh. denied 309 U.S. 696 (1940) 6

Excelsior Needle Co. v. *Globe Cycle Works*, 48 App. Div. 304, 62 N.Y.S. 538 (4th Dept. 1900) 6

Hebert v. *State of Louisiana*, 272 U.S. 312 (1926) 5

Illinois v. *Campbell*, 329 U.S. 362 (1946) 10

Kedroff v. *St. Nicholas Cathedral of Russian Orthodox Church of America*, 344 U.S. 94 (1952) 5

Lacaille v. *Feldman*, 44 Misc.2d 370, 253 N.Y.S.2d 937 (Sup. Ct. 1964) 8

Matter of Grunner, 295 N.Y. 510, 68 N.E.2d 514 (1946); rearg. den., 296 N.Y. 668, 69 N.E.2d 822 (1946) 9

Marine Midland Bank-Central v. *Gleason, et al.*, 47 N.Y. 2d 758, 391 N.E.2d 294, 417 N.Y.S.2d 458 (1979) 2, 3, 4, 6, 9

PAGE

In re Mead-Haskell Co., 47 F. Supp. 997 (S.D.Ca. 1942) 6

Osborne v. *State of Florida*, 164 U.S. 650 (1897) 10

P. J. Flanigan v. *County of Sierra*, 196 U.S. 553 (1905) 6

Rankin & Schatzell v. *Scott*, 12 Wheat. (25 U.S.) 177 (1827) 10-11

Scripto, Inc. v. *Carson*, 362 U.S. 471 (1945) 5

Skelly Oil Co., et al. v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950) 5

Smith v. *Erwin*, 77 N.Y. 466 (1879) 6

Smith v. *Meader Pen Corp.*, 255 App. Div. 397; 8 N.Y.S. 2d 39 (4th Dept.); aff'd 280 N.Y. 554; 20 N.E.2d 13 9

In the Matter of Thriftway Auto Rental Corp., 457 F.2d 409 (2nd Cir. 1972) 7-8

United States v. *City of New Britain*, 347 U.S. 81 (1954) 10

United States v. *Gilbert Associates*, 345 U.S. 361 (1953) 9

United States v. *Vermont*, 377 U.S. 351 (1964) 10

Vance Boiler Works v. *Cooperative Feed Dealers, Inc., et al.*, 46 Misc.2d 654, 280 N.Y.S.2d 303 (Sup. Ct. 1965) 6

Walker v. *Henry*, 85 N.Y. 130 (1881) 6

Williams v. *Kaiser*, 323 U.S. 471 (1945) 5

Witas v. *Carlson*, 201 Misc. 201; 110 N.Y.S. 2d 659 (Co. Ct. 1952) 9

STATUTES CITED

PAGE

New York Tax Law, Section 1141 subd. (b) (McKinney 1975) ..... *passim*

New York CPLR—Section 5202 (McKinney 1978) 7

New York CPLR—Section 5234 (McKinney 1978) 7

Rules of Decision Act, 28 U.S.C. Section 1652 (1948).... 5

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-588

In the Matter of
UNITED CASKET CO., INC.,
Bankrupt.

YORK-HOOVER CORP. and ELGIN METAL CASKET CO., INC.,
Petitioners,

vs.

UNITED CASKET CO., INC.,
Respondent,

and

DEPARTMENT OF TAXATION AND FINANCE
OF THE STATE OF NEW YORK,
Respondent.

BRIEF OF THE RESPONDENT UNITED CASKET CO., INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The respondent, United Casket Co., Inc., by Harold S. Berzow, Trustee in Bankruptcy, respectfully submits that the petition of York-Hoover Corp. and Elgin Metal Casket Co., Inc. (hereinafter referred to as "York-Elgin") for the issuance of a writ of certiorari, for the purpose of reviewing the order of the United States Court of Appeals for the Second Circuit entered on July 16, 1979, should be denied.

Opinions Below

The Court is respectfully referred to pages 1 and 2 of the petition and the appendix to the petition with respect to the opinions below. Please note in this regard, however, that both the Bankruptcy Court and District Court opinions have been excerpted by the petitioners.

Jurisdiction

The Court is respectfully referred to the presentation of jurisdiction set forth at page 2 of the petition, but respondent submits as more particularly set forth herein, that the facts of the within controversy are not contained within the ambit of the provisions of Rule 19 of the Rules of the Supreme Court.

Accordingly, the issuance of a writ of certiorari would be unwarranted in this case.

Question Presented

Did the United States Court of Appeals correctly interpret the New York Tax Law, §1141, subd. (b) in light of the decision rendered by the New York State Court of Appeals in the case of *Marine Midland Bank-Central* v. *Gleason, et al.*

Statement of the Case

The Court is respectfully referred to pages 4 through 9 of the petition. It should be noted, however, that prior to the time that the appeal was heard in *Marine Midland Bank-Central* v. *Gleason, et al.,* the respondent, the Department of Taxation & Finance of the State of New York, was granted permission to file a brief *amici curiae* and, the appellant in that case was granted permission to file the briefs of the petitioners herein, which briefs had been filed with the United States Court of Appeals. It would thus appear that the New York State Court of Appeals had the benefit of reviewing all of the arguments presented by both the petitioners and the respondent, the Department of Taxation and Finance of the State of New York.

Reasons for Denying the Writ

The petitioners have not presented any issue within the "characters of reasons" set forth in Rule 19 of the Rules of the Supreme Court relating to the issuance of a writ of certiorari.

Moreover, this case relates solely to the interpretation of a New York statute which has recently been considered by the New York State Court of Appeals. The New York State Court of Appeals reviewed the petitioners' arguments with respect thereto and conclusively rejected petitioners' interpretation of the statute.

Accordingly, this Court should not review this case for it should be bound by the ruling of the New York Court of Appeals.

I.

The Court of Appeals for the Second Circuit Correctly Interpreted § 1141(b) of the New York Tax Law (McKinney, 1969) in Accordance With the Decision of the New York State Court of Appeals in *Marine Midland Bank-Central* v. *Gleason, et al.

Rule 19 of the Rules of the Supreme Court sets forth the considerations governing review on certiorari to the Supreme Court. The case at bar does not involve a situation where a state court has determined a federal question of substance not previously determined by the Court or has decided a question not in accordance with a prior decision of the Court.

Furthermore, the case at bar does not present a pattern where decisions of the various Circuit Courts of Appeal are in conflict on the same matter, or where the decision of the Second Circuit Court of Appeals is in conflict with applicable state law. Quite to the contrary, the decision of the United States Court of Appeals gave explicit reference to proceedings pending before the New York State Court of Appeals on the question at bar and fashioned its Order in compliance and in conformity with the decision of the New York State Court of Appeals' interpretation of the import and effect of §1141(b) of the New York State Tax Law.

Furthermore, the case at bar does not present a situation where a federal court or a state court has decided a federal question in conflict with applicable decisions of the Court, or has so departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's supervisory powers.

---

* 47 N.Y.2d 758, 391 N.E.2d 294, 417 N.Y.S.2d 458 (1979).

The United States Court of Appeals for the Second Circuit, being cognizant that the New York State Court of Appeals was considering the interpretation of § 1141(b) of the New York State Tax Law, carefully fashioned its decision to comport with the interpretation given to a New York State statute by the state's highest court.

II.

The Interpretation by the New York State Court of Appeals of a New York State Statute Is Binding Upon the Federal Court.

It is well settled that the interpretation by a state's highest court of its own statutory law is binding upon the Supreme court absent an impingement upon a federal right, a conflict with the Constitution or with a federal statute. *Scripto Inc.* v. *Carson*, 362 U.S. 207, 210 (1960); *Williams* v. *Kaiser*, 323 U.S. 471, 473 (1945); *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church of North America*, 344 U.S. 94, 99 (1952); *Hebert* v. *State of Louisiana*, 272 U.S. 312, 316 (1926); *Skelly Oil Co., et al.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 674 (1950).

Title 28, § 1652 of the United States Code is on point. The case at bar does not present to the Court circumstances in which either the Constitution or treaties of the United States or Act of Congress require federal review of a question of state law. All federal court decisions are completely consonant with the opinion of the New York State Court of Appeals.

The Court has on many occasions stated, that the decisions of the state courts interpreting their local revenue statutes are binding upon the federal courts absent a conflict with federal law or the Constitution of the United

States. *P. J. Flanigan* v. *County of Sierra*, 196 U.S. 553, 562 (1905); *Dixie Greyhound Lines, Inc.* v. *McCarroll*, 101 F.2d 572, 574 (8th Cir., 1939); aff'd 309 U.S. 176 (1940); rehearing denied 309 U.S. 696 (1940); See also, *In re Mead-Haskell Co.*, 47 F. Supp. 997, 999 (S.D.Ca., 1942).

III.

The New York State Court of Appeals Decision in *Marine Midland Bank-Central* v. *Gleason, et al.*, Was Not a Departure From Prior Decisions but Merely a Reaffirmation of What the Law Is in New York State.

The petitioners advance the argument that a writ of execution must be issued to be executed in order for a judgment creditor, under New York law, to obtain a lien upon the debtor's personal property, citing *Smith* v. *Erwin*, 77 N.Y. 466 (1879); *Walker* v. *Henry*, 85 N.Y. 130 (1881); *Excelsior Needle Co.* v. *Globe Cycle Works*, 48 App. Div. 304, 62 N.Y.S. 538 (4th Dept. 1900); *Vance Boiler Works* v. *Cooperative Feed Dealers, Inc., et al.*, 46 Misc. 2d 654, 260 N.Y.S. 2d 303 (Sup. Ct. 1965).

All of the aforementioned cases cited exclusively deal with a non-sovereign judgment creditor and, accordingly, have no application to the issues presented herein.

The petitioners have attempted to analogize this case to that of a non-sovereign judgment creditor who has failed to extend his lien by levy or as otherwise provided for by the Civil Practice Law & Rules of New York State. The analogy is misplaced. The New York Statute which sets forth the basis for creating a judgment creditor's lien upon personal property of a judgment debtor is strikingly different from the provisions of the New York Tax Law, § 1141. (McKinney 1975)

The Civil Practice Law & Rules (McKinney 1972) does not provide that the mere docketing of a judgment creates a lien against the judgment debtor's personal property where said property is capable of delivery. A sheriff's levy is required before a lien can attach to the debtor's personalty.

The rule is different, however, where the property is incapable of delivery (seizure). In that case the mere delivery of an execution to the sheriff creates a lien on the debtor's property. Cf., CPLR §§ 5234 and 5202 (McKinney 1978).

On the other hand, the New York Tax Law, § 1141, *supra*, provides that the mere docketing of the tax warrant shall create a lien upon the debtor's personalty.

It is readily apparent therefore, that the New York Legislature has provided different rights and privileges to the sovereign State of New York, as distinguished from the other creditors. See *Corrigan* v. *U.S. Fire Insurance Company*, 427 F. Supp. 940 (S.D.N.Y. 1977), where the court was faced with a similar issue as in the case at bar insofar as the construction New York Tax Law, § 1141 is concerned.

The Court in *Corrigan* v. *U.S. Fire Insurance Company, supra*, said at page 943:

> The United States argues that since an execution has not been issued to the sheriff, the lien against the fund has not been established. However, in these tax cases, the State does not have to issue a separate execution to the sheriff. It is clear from the three state statutes involved that the warrant is in effect an execution and has been delivered to the sheriff.

The United States Court of Appeals below, relied upon its own decision in the case of *In the Matter of Thriftway*

Auto Rental Corp., 457 F.2d 409 (2nd Cir. 1972), which involved the exact issue presented in the case at bar and concluded that the filing of the tax lien by the City of New York under its Administrative Code created a lien upon the bankrupt's assets, notwithstanding the fact that the City had taken no steps to either seize the bankrupt's property or otherwise enforce the lien.

The statute involved in *In the Matter of Thriftway, supra*, follows exactly the same verbiage as set forth in New York Tax Law, § 1141(b).

The *Thriftway* decision, *supra*, was anything but novel in its approach for it rested upon ample precedent. See, *Argiriou & Finkel* v. *Marciante Luncheonette II, Inc.*, 64 Misc.2d 660, 315 N.Y.S.2d 448 (Sup. Ct. 1970); *In re DeKalb Ave. Constr.*, 11 A.D.2d 240, 205 N.Y.S.2d 125 (2nd Dept. 1960); aff'd, 12 N.Y.2d 1051, 190 N.E.2d 240, 239 N.Y.S.2d 880 (1963); *Lacaille* v. *Feldman*, 44 Misc.2d 370, 253 N.Y.S.2d 937 (Sup. Ct. 1964) and *In re Estate of Robbins*, 74 Misc. 2d 793, 346 N.Y.S.2d 86 (Surr. Ct. 1973).

In the case of *In re Estate of Robbins, supra*, the court was faced with the question of priority as between the State of New York and a bank which had obtained a judgment against the decedent prior to the time that the state had filed its warrant. The court stated in the body of its opinion, the following:

> The State Tax Commission is, however, entitled to priority under the rule giving priority to claims of the State as sovereign over other general liens. The claim of the State Tax Commission is based upon its warrants which have the same effect as judgments for taxes due from the debtor. Such claims are preferred except where a creditor has obtained a prior specific lien. *Matter of Carnegie Trust Co.*, 206 N.Y. 390, 99 N.E. 1096; *Matter of Gruner*, 295 N.Y. 510, 68 N.E.2d 514, rearg. den., 296 N.Y. 668, 69 N.E.2d 822; *Smith* v. *Meader Pen Corp.*, 255 App. Div. 397, 8 N.Y.S.2d 39; aff'd wo. op. 280 N.Y. 554, 20 N.E.2d 13; *Witas* v. *Carlson*, 201 Misc. 201, 202, 110 N.Y.S.2d 659, 661, in which it is stated, 'The rule is well settled that monies and taxes due the state have a priority over all other general liens and may be superseded only by a prior specific lien obtained by a creditor.' *Id.* at p. 91.

It is thus apparent that the Court of Appeals of the State of New York in *Marine Midland Bank-Central* v. *Gleason, et al., supra*, did not depart in any way from what the law in New York had always been with respect to New York's rights under a filed tax warrant.

IV.

The New York State Tax Warrant Having Been Sufficiently Choate to Create a Lien Upon the Bankrupt's Personalty and Having Been Docketed Prior to the Security Interest of the Petitioners Was Therefore Prior in Right.

The petitioners advance the argument that because the State of New York failed to levy upon the warrant and reduce the debtor's property to possession, that the ruling in this case should be controlled by the decision of *United States* v. *Gilbert Associates*, 345 U.S. 361 (1953).

We infer from the petitioners' reliance upon *United States* v. *Gilbert, supra*, that they are raising the choateness doctrine as it applies to the New York tax warrant.

In response to this, we point out that the choateness doctrine as developed by the federal courts applied essen-

tially to those situations where a federal claim is in competition with other lienors with respect to a debtor's property. See *Illinois* v. *Campbell,* 329 U.S. 362 (1946) and *Osborne* v. *State of Florida,* 164 U.S. 650 (1897).

Although the Internal Revenue Service was a party defendant when this case began, early in the proceedings, the Internal Revenue Service withdrew after having conceded that the Internal Revenue Service's lien against the bankrupt was subordinate to the liens asserted by the petitioners and the NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE. This being the case, the federal choateness doctrine has no application in the case.

The respondent herein submits that even if the Court was to consider this case as coming within the federal choateness doctrine, then, in such event, a careful analysis of the New York tax warrant and a lien created by New York State Tax Law §1141 would meet the test for choateness as established by *United States* v. *City of New Britain,* 347 U.S. 81 (1954).

The standards established by *United States* v. *City of New Britain, supra,* are that there must be an identity of the lienor and the property subject to the lien and the amount of the lien established. New York State Tax Law §1141 meets all the criteria delineated in the *New Britain* case, *supra.* See also, *United States* v. *Vermont,* 377 U.S. 351 (1964).

In the instant case, New York State filed its tax warrant on April 8, 1976. On May 12, 1978, the petitioners filed their financing statements under the New York Uniform Commercial Code and thus perfected their security interest in accord therewith.

The State of New York, having been prior in time, is therefore prior in right. See *Rankin & Schatzell* v. *Scott,*

12 Wheat. (25 U.S.) 177 (1827), in which Chief Justice Marshall stated the rule as follows:

> The principle is believed to be universal that a prior lien gives a prior claim, which is entitled to prior satisfaction, out of the subject it binds . . .

The petitioners urge upon the Court as a basis for granting certiorari that by permitting the Court of Appeals decision to stand, industry will be intolerably burdened with the requirement of making a tax warrant search to ascertain whether or not there is a prior perfected lien on a debtor's property.

This statement is a gross exaggeration of the entire problem. Under New York Law, the Department of Taxation & Finance of the State of New York files a tax warrant with the County Clerk's office where the debtor has its residence or principal place of business which is the very place where all judgments are docketed against a resident debtor.

A careful examination of the County Clerk's Office in this case would have clearly have revealed the existence of the New York State liens. The petitioner's failure to make a diligent search is at the very root of this controversy. If the petitioners made a search and inspection for prior Uniform Commercial Code financing statements, they likewise could have made an inspection of the County Clerk's records and would have resolved any doubts as to whether or not the bankrupt's property was encumbered and they would not have had to rely upon representations contained in a boiler plate form of agreement to the effect that the bankrupt's property was free and clear of encumbrances.

Parenthetically, we note that the representations made by the bankrupt could in no way affect the State of New

York's rights as provided for by law. This is not a case where the burden of searching a local filing office's records creates an impediment to industry and commerce among the several states.

CONCLUSION

For all of the reasons set forth above, it is respectfully requested that the petition for a writ of certiorari be denied for there is no issue before this court of a magnitude to require to the issuance of such a writ.

Dated: October 24, 1979

Respectfully submitted,

HAROLD S. BERZOW, Esq.
Counsel for Respondent
United Casket Co., Inc.
67 Wall Street
New York, New York 10005
(212) 344-2929

NEAL M. ROSENBLOOM, Esq.
FINKEL, GOLDSTEIN & BERZOW
Of Counsel
67 Wall Street
New York, New York 10005
(212) 344-2929

APPENDIX

APPENDIX

New York Tax Law, Section 1141, subd. (b)
(McKinney 1975)

SALES AND USE TAX

Section 1141—

(b) As an additional or alternate remedy, the tax commission may issue a warrant, directed to the sheriff of any county commanding him to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his county, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the tax commission and to pay it the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any officer or

employee of the department of taxation and finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the tax commission may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the state had recovered judgment therefor and execution thereon had been returned unsatisfied.

New York CPLR—Sect. 5202
(McKinney 1978)

§ 5202. Judgment creditor's rights in personal property

(a) Execution creditor's rights. Where a judgment creditor has delivered an execution to a sheriff, the judgment creditor's rights in a debt owed to the judgment debtor or in an interest of the judgment debtor in personal property, against which debt or property the judgment may be enforced, are superior to the extent of the amount of the execution to the rights of any transferee of the debt or property, except:

1. a transferee who acquired the debt or property for fair consideration before it was levied upon; or

2. a transferee who acquired a debt or personal property not capable of delivery for fair consideration after it was levied upon without knowledge of the levy.

(b) Other judgment creditor's rights. Where a judgment creditor has secured an order for delivery of, payment of, or appointment of a receiver of, a debt owed to the judg-

ment debtor or an interest of the judgment debtor in personal property, the judgment creditor's rights in the debt or property are superior to the rights of any transferee of the debt or property, except a transferee who acquired the debt or property for fair consideration and without notice of such order.

New York CPLR—Sect. 5234
(McKinney 1978)

§ 5234. Distribution of proceeds of personal property; priorities

(a) Distribution of proceeds of personal property. After deduction for and payment of fees, expenses and any taxes levied upon sale, delivery, transfer or payment, the proceeds of personal property or debt acquired by a receiver or a sheriff or other officer authorized to enforce the judgment shall be distributed to the judgment creditor and any excess shall be paid over to the judgment debtor.

(b) Priority among execution creditors. Where two or more executions or orders of attachment are issued against the same judgment debtor and delivered to the same enforcement officer, they shall be satisfied out of the proceeds of personal property or debt levied upon by the officer in the order in which they were delivered. Where two or more executions or orders of attachment are issued against the same judgment debtor and delivered to different enforcement officers, and personal property or debt is levied upon within the jurisdiction of all of the officers, the proceeds shall be first applied in satisfaction of the execution or order of attachment delivered to the officer who levied, and thereafter shall be applied in satisfaction of the executions or orders of attachment delivered to those of the other

officers who, before the proceeds are distributed, make a demand upon the officer who levied, in the order of such demands. An execution or order of attachment returned by an officer before a levy or delivered to him after the proceeds of the levy have been distributed shall not be satisfied out of those proceeds.

(c) Priority of other judgment creditors. Where personal property or debt has been ordered delivered, transferred or paid, or a receiver thereof has been appointed by order, or a receivership has been extended thereto by order, and the order is filed before the property or debt is levied upon, the rights of the judgment creditor who secured the order are superior to those of the judgment creditor entitled to the proceeds of the levy. Where two or more such orders affecting the same interest in personal property or debt are filed, the proceeds of the property or debt shall be applied in the order of filing. Where delivery, transfer, or payment to the judgment creditor, a receiver, or a sheriff or other officer is not completed within sixty days after an order is filed, the judgment creditor who secured the order is divested of priority, unless otherwise specified in the order or in an extension order filed within the sixty days.

Rules of Decision Act, 28 U.S.C. Section 1652 (1948)

§ 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply. June 25, 1948, c. 646, 62 Stat. 944.